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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/826,783

04/16/2004

Jeffrey M. Wilkinson

304-0002US

1283

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7590

08/01/2005

WONG, CABELLO, LUTSCH, RUTHERFORD & BRUCCULERI,
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HOUSTON, TX 77070

EXAMINER

GAY, JENNIFER HAWKINS

ART UNIT

PAPER NUMBER

3672

DATE MAILED: 08/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/826,783	Applicant(s) WILKINSON, JEFFREY M.	
	Examiner Jennifer H. Gay	Art Unit 3672	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,4-10 and 13-32 is/are rejected.
- 7) ☒ Claim(s) 2,3,11 and 12 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/19/04</u> . | 6) <input type="checkbox"/> Other: ____ |

HL

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 320, 340, 420, and 440. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 260. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The abstract of the disclosure is objected to because the abstract contains language that is considered to be purported merits, "An improved process...". Correction is required. See MPEP § 608.01(b).

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4. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

Claim Objections

5. Claims 1, 17-20, and 32 are objected to because of the following informalities:

- Claim 1, "Fracture Gradient" should be changed to --fracture gradient--.
- Claim 17, "(h)" should be changed to --(g)-- as claim 8 ends with step "(f)".

Due to the fact that claim 17 does not depend on claim 16, it will be understood that claim 17 recites a separate and different step (g). If applicant intended claim 17 to depend from claim 16 then the step labeling is correct.

- Claim 18, "(i)" should be changed to --(h)--. See explanation above.
- Claim 19, "(j)" should be changed to --(h)--. See explanation above.

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- Claim 20, line 9, “the first portion” should be changed to --the second portion--.
- Claim 32, “(j)” should be changed to --(i)-- for reasons similar to those given above.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 16 and 20-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 16, 19, 20, and 31 are considered to be indefinite because the examiner is unsure as to what the phrase “undiverting fluid” is referring. While the examiner is assuming that this phrase means that the ball sealers are removed from the perforations but this is not clear from the language of the claims.

Claim 26 is considered to be indefinite because it recites “the portion” when the claim from which it depends, claim 20, recites a first and second portion. It is unclear if “the portion” in claim 26 refers to the first or second portion of claim 20.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 4-10, 13-15, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Nierode (US 6,186,230).

Regarding claim 1: Nierode discloses a method for stimulating an earth formation where the formation includes a plurality of intermediate zones and a casing through the

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zone; each of the zones has a fracture gradient and the casing is perforated (4:40-50).

The method involves the following steps (3:37-41, 49-66):

- Pumping fluid into the casing to initiate hydraulic treatment of a first zone that has a first gradient.
- Using a first instant shut-in pressure (5:15-20) to determine the first gradient.
- Diverting the fluid into a second zone using diverters to block the fluid from the first zone.
- Pumping fluid into the casing to initiate hydraulic treatment of the second zone having a second gradient.
- Using a second instant shut-in pressure to determine the second gradient.
- Dislodging the diverters from the first zone.
- Hydraulically stimulating the zones.

Regarding claims 4-6, 13-15: The diverters are ball sealers that are used to block the perforations in the respective zones. The step of dislodging the diverter involves unseating the ball sealers.

Regarding claims 7, 9: The fluid used in the above method is one of the listed fluids as the list includes a wide variety of fluids commonly used in wellbore fracturing treatments.

Regarding claims 8, 17, 18: The above method further involves determining if the fluid has been diverted from the first portion to the second and if the fluid has been diverted, treating the next zone.

Regarding claim 10: The first gradient is inherently at least equal to the fracture gradient of the formation.

Allowable Subject Matter

10. Claims 2, 3, 11, and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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11. Claims 16 and 19 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12. Claims 20-32 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Conclusion

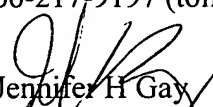
13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

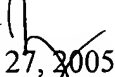
The remaining references made of record disclose various wellbore-fracturing methods.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer H. Gay whose telephone number is (571) 272-7029. The examiner can normally be reached on Monday-Thursday, 6:30-4:00 and Friday, 6:30-1:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bagnell can be reached on (571) 272-6999. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer H. Gay
Patent Examiner
Art Unit 3672

JHG 
July 27, 2005